



**SOFTWARE APPLICATION AND DATA USAGE AGREEMENT  
BETWEEN  
[INSERT NAME OF LOCAL SCHOOL DISTRICT]  
AND  
MICHIGAN DEPARTMENT OF EDUCATION  
FOR  
THE MICHIGAN INTEGRATED CONTINUOUS IMPROVEMENT PROCESS (MICIP)  
PLATFORM**

**1. Introduction**

This MICIP Platform (Software Application) and Data Usage Agreement (“MICIP-Agreement”) is between the [Insert Name of Local School District] (“Local District”) and the Michigan Department of Education (“MDE”), including its contractors. The Local District and MDE are collectively referred to as the “parties” or individually as “party”.

MICIP is a pathway for districts to improve student outcomes by assessing whole child needs to develop plans and coordinate funding.

The Local District is the party that is using the MICIP application (specifically called the “MICIP Platform” henceforth) and using and disclosing its data under this MICIP-Agreement.

MDE is the party that, (and may outsource) via the MICIP Platform and its intended use only, is collecting, receiving, processing and housing data from the Local District under this MICIP-Agreement. Specifically, MDE is only responsible for the backing up and securing of data created and/or uploaded by the districts; the Local District retains ownership of its data.

This MICIP-Agreement establishes the conditions under which the Local District agrees to use the MICIP Platform, for its intended use which is the creation and maintenance of continuous improvement plans, and for disclosure of data to MDE as specified in Schedule A, and also applies to the protection of this data.

This MICIP-Agreement clarifies MICIP Platform’s intended use and the resulting usage responsibilities of each party and establishes terms governing the use, disclosure, and disposition of the data displayed and processed within.

## **2. Purpose**

**Application and Intended Use:** The MICIP Platform is a district improvement focused software application targeted at school districts, intermediate school districts (ISD), and public school academies and planned for rollout starting Q4-2020 with its specific purpose being the development of district/school improvement plans.

**Data and Intended Use:** The data, necessary for the use and operation of the MICIP Platform towards the development of district/school improvement plans, will be used by the MICIP Platform only as is expressly agreed upon by the parties under this MICIP-Agreement. Access to the data by any other party or for any purpose not identified in this MICIP-Agreement is strictly prohibited. Data provided by the Local District remains the property of the Local District.

The Local District will use data from MiSchoolData, the Michigan DataHub, other similarly integrated educational data systems, or locally loaded data for the purpose of supporting the MICIP process.

**MICIP Platform Sharing Agreement:** This agreement does not describe a typical sharing of data between two parties, rather an acknowledgement by both parties MDE and the Local District, confirming their use of the MICIP Platform as restricted to the purpose of continuous improvement plan development only, abiding by generally accepted best practices of controlling access to the Platform by their relevant staff, protecting data within the Platform to minimize the risk of introduction of inappropriate content into the Platform.

**MDE right to protect the MICIP Platform and User Community:** While MDE offers to the Local District the MICIP Platform as a planning tool/software application and has no intention of closely monitoring the activities and content of the MICIP Platform or the Local District's artifacts within the Platform, MDE reserves the right to take immediate action without explicit permission of the Local District, to add, change or delete data in the Platform (e.g. PII, PHI, FERPA, offensive, or otherwise inappropriate) should it become aware of any undesirable content in the Platform, potentially exposing the parties in this agreement and the MICIP user community as a whole, to any risk/liability. MDE will notify the district within one business day hours upon the removal of data from the system.

### **3. Understanding of MICIP Platform**

The parties intend that the MICIP Platform, at the direction and with the authorization of the Local District, will house data from the Local District in a data center per its intended purpose as described above and will complete the following:

- a. MICIP Platform will access and store only the data elements that the Local District has intentionally, and on its own, loaded into the MICIP Platform, and the Local District is solely responsible for all data elements they load into the MICIP Platform, under one or multiple of the following conditions:
  - i. Data that is entered into the MICIP Platform via MiSchoolData, using the Michigan DataHub, any of the DataHub's integrations, or any future MICIP integrations;
  - ii. Locally entered data that is entered into MICIP using the direct upload method provided via the MICIP platform;
  - iii. Data sourced from supporting systems such as MiStrategyBank; or
  - iv. Data from historic plan management systems such as ASSIST.
- b. MICIP Platform will store only the necessary data (as defined in Schedule A) that the Local District has loaded for use in the MICIP Platform.
- c. MDE, the Local District, or any party otherwise permitted to use the MICIP Platform by the Local District per this agreement and for whom the Local District takes sole responsibility, shall ensure data readiness checks and processes are in place so that the data used for this project can be updated and is appropriate for use in this project.
- d. The Local District should not rely on the MICIP Platform for the storage of the sole copy of documents critical to the district, or for retrieving critical uploaded documents from MICIP, as the secure repository of Local District content.
- e. The MICIP Platform is not to be used as a general document sharing tool between Local District personnel, rather as the store of continuous improvement plans only, with supporting documentation uploaded by the Local District as needed and relevant to their plans.
- f. Once completed/published, the Local District should retain a downloaded and/or printed copy, using reporting tools reporting tools available in the

platform, of the completed plan itself, for offline use or reference in the event of a system outage.

- g. As MDE is responsible for the preservation and securing of data, MDE will need to determine and implement a data backup/restore strategy on its own in collaboration with its development partners. Also, to resolve a suspected or confirmed security issue, MDE may need to suspend Local District accounts, while a resolution is determined and implemented.

#### **4. Data to Be Hosted**

The Local District, solely at its own discretion, provides MDE with the data described in Schedule A. The Local District must not, and agree not to, load student level or Personal Identifiable Information (PII) data into the MICIP Platform.

The data as applicable to this MICIP-Agreement, which the Local District authorizes to be transferred, loaded, and stored on the MICIP Platform for the purpose specified in this agreement, consists of Local District data:

- a. Sourced from integrated systems such as MiSchoolData and MiDataHub as part of district analysis and planning work;
- b. Uploaded directly by the Local District into the MICIP Platform, as part of their analysis and planning work;
- c. Sourced from supporting systems such as MiStrategyBank;
- d. From historic plan management systems such as ASSIST; or
- e. Developed within the MICIP Platform and in the preparation of school improvement plans, goals, strategies, portfolios.

#### **5. Method of Transfer**

The Local District's data will be securely transferred using either:

- a. Interfaces developed for the MICIP Platform to external sources as listed in the data under Section 4, Data to Be Hosted, above;
- b. Local District user uploaded files
- c. A State of Michigan file exchange gateway; or

- d. A cloud data storage service of MDE's choosing that resides in the continental United States and is FedRAMP certified.

The Local District's data will be encrypted in transit and at rest.

## **6. Frequency of Transfer**

The data to be shared under this MICIP-Agreement will be transferred only at a frequency and for a period of time as is necessary to meet the intended purpose and use of the MICIP Platform stated in #2, Purpose, above.

## **7. Legal Authority**

**Local District.** The authority for the Local District to enter into this MICIP-Agreement is MCL 380.11a(4). A general powers school district may enter into agreements, contracts, or other cooperative arrangements with other entities, public or private, including, but not limited to, another school district or an intermediate school district, or join organizations as part of performing the functions of the school district. The authority for the Local District to share the data is MCL 380.11a(4) and 34 CFR 99.31.

**MDE.** The authority for MDE to enter into this MICIP-Agreement is MCL 388.1009; MCL 388.1010; MCL 380.5(6); and MCL 380.11a(4). The authority for MDE to collect the data is MCL 388.1009; MCL 388.1010; MCL 380.5(6); MCL 380.11a(4); and 34 CFR 99.31.

## **8. Notices and Consents**

To the extent required by law, regulations, or rules, the Local District has obtained, and will continue to obtain, the appropriate notices, consents, and authorizations from the individuals and entities that the data concerns. The Local District shall maintain evidence of these notices, consents, and authorizations throughout the term of this MICIP-Agreement.

## **9. Data Classification**

The data has been classified using Department of Technology, Management, and Budget (*DTMB*) *Data Classification Standard* with the results for data shared under this MICIP-Agreement being a data classification level of confidential and a security categorization of moderate [Medium]. The State has also identified that the data shared falls under FERPA regulatory requirements.

The minimum security controls and control enhancements derive from the [National Institute of Standards and Technology \(NIST\) SP 800-53, \*Recommended\*](#)

*Security Controls for Federal Information Systems.* The minimum baseline security controls are the starting point for the security control selection process and are the basis from which controls and control enhancements may be removed, added or customized to achieve the level of security protection required for the data or information system.

## **10. Local District's Responsibilities**

The Local District must:

- a. Agree to use the MICIP Platform for its intended use only as stated in #2, Purpose, above;
- b. Maintain appropriate levels of system security and access controls in relation with Authentication (e.g., ID creation within the Local District, strong password and expiry enforcement policies, routine usage audits) and Authorization (i.e., who is allowed to use the MICIP Platform and at what level), such as those specified in item #9, Data Classification;
  - i. Since access to the MICIP Platform has been simplified for ease of use by the Local District, as a consequence this in turn relies on authentication methods, policies, practices, and rigor enforced at the district level; which the Local District agrees to maintain per this MICIP-Agreement.
  - ii. These levels of security as applicable to the MICIP Platform would include implementing internal district controls on who may access the Platform as representative/s of the district, and continually and periodically assessing their need to access the MICIP Platform.
  - iii. General system security awareness training, plus PII, Public Health Information (PHI), and Family Educational Rights and Privacy Act (FERPA) training, 20 U.S.C. 1232g, *et seq.*, sensitivity awareness, for the Local District's staff using the MICIP Platform is expected as part of signing this MICIP-Agreement.
- c. Provide MDE with access to the data consistent with law, regulations, rules, and contractual obligations and the terms and conditions of this MICIP-Agreement;

- d. If necessary, work with MDE and the Department of Technology, Management, and Budget (DTMB) to facilitate the sharing of data under this MICIP-Agreement.
- e. Establish and maintain a data privacy and security program that adheres to all applicable federal, state, and local laws including but not limited to FERPA; and
- f. To the extent feasible in the local district, make every effort to comply with the State of Michigan DTMB Policy 1340.00.080.01 Identification and Authentication Standard, which policy is provided in item #9, Data Classification.

## 11. MDE's Responsibilities

MDE must:

- a. **Protect the data.** MDE must comply with all applicable State of Michigan information technology, privacy, and information security policies to ensure the security and confidentiality of the data and protect the data from being accessed, used, disclosed, or stored in a manner other than as provided in the MICIP-Agreement.
  - i. As MDE is responsible for the preservation and securing of data, MDE will need to determine and implement a data backup/restore strategy on its own in collaboration with its development partners.
  - ii. To resolve a suspected or confirmed security issue, MDE may need to suspend Local District accounts, while and until, a resolution is determined and implemented.
- b. **FERPA.** In the course of providing services during the term of the MICIP-Agreement, MDE may have access to student education records that are subject to FERPA and the regulations promulgated there under. Such information is considered confidential and is therefore protected. To the extent that MDE has access to "education records" under the MICIP-Agreement, it is deemed a "school official," as each of these terms are defined under FERPA. MDE agrees that it shall not use education records for any purpose other than in the performance of the MICIP-Agreement. Except as required by law, MDE shall not disclose or share education records with any third-party unless permitted by the terms of this MICIP-Agreement or to contractors who have agreed to maintain the confidentiality of the education records to the same extent required of MDE under this MICIP-Agreement.

- c. **Access to Records.** In the event any person(s) seek to access protected education records, whether in accordance with FERPA or other Federal or relevant State law or regulations, MDE will promptly, and unless otherwise required by law inform the Local District of such request in writing if allowed by law or judicial and/or administrative order. Unless otherwise required by law: (i) MDE shall not provide direct access to such data or information or respond to individual requests; (ii) MDE shall only retrieve such data or information upon receipt of, and in accordance with, written directions by the Local District and shall only provide such data and information to the Local District; and (iii) it shall be the Local District's sole responsibility to respond to requests for data or information received by MDE regarding the Local District's data or information. Should MDE receive a court order or lawfully issued subpoena seeking the release of such data or information, MDE shall provide prompt notification to the Local District of its receipt of such court order or lawfully issued subpoena and shall promptly provide the Local District with a copy of such court order or lawfully issued subpoena prior to releasing the requested data or information, if allowed by law or judicial and/or administrative order.
- d. **Use the data only for the stated purpose.** MDE will use the data provided under this MICIP-Agreement solely for the purpose identified in #2, Purpose, above.
- e. **Limit access.** MDE will limit its access to the data provided under this MICIP-Agreement to:
  - i. Authorized users of the MICIP Platform; and
  - ii. The agents, contractors, and subcontractors who require access to the data to perform the intended activities on behalf of MDE. Agents, contractors, and subcontractors must agree in writing to the same or more stringent terms and conditions of this MICIP-Agreement.
- f. **Minimize data requests, usage, and disclosures.** MDE will request, use, and disclose only the minimum amount of data necessary to fulfill the purposes of this MICIP-Agreement.
- g. **Data disclosure.** MDE will not disclose the data except as expressly permitted in this MICIP-Agreement or as required by law. Except as otherwise provided in this MICIP-Agreement, MDE will not disclose the data to others.



- h. **Data requested under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*** In response to a FOIA request submitted to MDE for data that is covered under this MICIP-Agreement, MDE will raise all permissible exemptions from public disclosure under section 13(1) of the FOIA, MCL 15.243(1), that MDE determines apply to the data being requested. Where another statute or regulation, state or federal, governs the nondisclosure of data, MDE will deny the request under section 13(1)(d) of the FOIA, MCL 15.243(1)(d), and cite the other statute or regulation. Prior to the disclosure of any data under the FOIA, MDE will notify the Local District in writing before the statutory date for MDE's compliance with the FOIA.
- i. **Exceptions to requirements to notify the Local District.** Exceptions to the requirements to notify the Local District of disclosures under this section include:
  - i. Data that was already in MDE's possession without an obligation of confidentiality;
  - ii. Data that was developed independently by the MDE;
  - iii. Data that was obtained from a source other than the Local District without an obligation of confidentiality; or
  - iv. Data that was or is publicly available when received or thereafter became publicly available (other than through any unauthorized disclosure by the MDE).
- j. **Comply with retention and disposal schedules.** MDE must return or destroy the data, including copies of the data, upon termination of this MICIP-Agreement, consistent with direction from the Local District, applicable law, and State record retention and disposal schedules. The State's legal ability to return or destroy the Local District's data may be restricted by its retention and disposal schedule, in which case such data will be returned or destroyed after the retention period expires. MDE must provide written certification of data destruction if requested by the Local District. MICIP Plans will be retained for a minimum of five years from the date of completion.

## **12. Costs and Damages**

Each party will be responsible for its own costs, losses, and damages related to the sharing of data under this MICIP-Agreement except as otherwise provided in §13, Security Breach Notification, below. Neither party will be liable to the other

for any claim related to or arising under this MICIP-Agreement for consequential, incidental, indirect, or special damages.

### **13. Security Breach Notification**

MDE must adhere to *DTMB Technical Procedure No. 1340.00.090.01.01, How to Handle a Security Breach Procedure*. MDE must implement internal policies and procedures for reporting data security incidents and provide the Local District a copy upon request.

Notwithstanding any internal policy to the contrary, if MDE discovers any suspected or actual use or disclosure of the Local District's data not provided for under this MICIP-Agreement, the MDE must report it to the Local District within one business day or as soon as possible of becoming aware of such disclosure. A business day is any day other than a Saturday, Sunday, or other day on which MDE is authorized or required by law to be closed for business.

MDE must identify through audits or other available means entities or persons who improperly access, use, or disclose the data.

The parties will cooperate with one another to investigate, mitigate, and remedy unauthorized access, use, or disclosure of the data.

If any act, error, omission, negligence, misconduct, or breach by MDE or its contractor compromises the security, confidentiality, or integrity of the data, MDE will take all reasonable actions required to comply with applicable law as a result of such security incident and assumes full responsibility for any associated costs and duties, including notification of affected individuals and entities.

Additionally, the Local District is required to inform the MDE MICIP Lead if/when a security breach potentially impacting the MICIP Platform has occurred, including unauthorized MICIP Platform access and data loss or intentional/inadvertent disclosure.

### **14. Cooperation; Execution of Additional Agreements**

The parties will execute such documents as may be necessary to realize the intentions of this MICIP-Agreement or comply with law. The parties will also require third-parties to execute such documents as may be necessary to realize the intentions of this MICIP-Agreement or comply with law, prior to granting the third-party access to the data. Examples include business associate and non-disclosure agreements.

## 15. Issue Resolution

The parties will work collectively to resolve system issues relative to MDE's access to the data. Additionally, upon the request of either party, the parties will convene as reasonably necessary for the purpose of resolving problems that may arise in the administration or enforcement of this MICIP-Agreement. The parties will exchange documentation as reasonably necessary to identify and explain issues and positions. Any portion of this MICIP-Agreement that may be subject to interpretation will be addressed at these meetings.

## 16. Notices

Notices and other written communications must be addressed to the individuals below or their successors. Parties may amend contact information by providing written notice of the change to the other party. Notices or other written communications required or related to this MICIP-Agreement must be in writing and delivered in person or by email.

<b>For Local District:</b>  [Name, title] [Division, Department] [Phone] [Email]	<b>For MDE:</b>  Dave Judd, Director Department of Education 517-241-7162 juddd@michigan.gov
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## 17. Compliance Monitoring

Upon changes in Local District and/or MDE administration impacting the use and/or operation of the MICIP Platform, the parties will review the practices and procedures outlined in this MICIP-Agreement to ensure compliance with the terms of the MICIP-Agreement and the law. The parties will provide the results of such reviews to the other party upon written request. The parties will also take appropriate measures to ensure that information about the MICIP-Agreement is kept up to date. The parties have designated the individuals listed in §16, Notices, above as responsible for this section.

The parties also recognize that this MICIP-Agreement is subject to compliance audits, investigations, and reviews as provided by law.

## 18. Amendments

This MICIP-Agreement may be amended by written agreement of the parties. If amendment to this MICIP-Agreement is required to comply with federal or State laws, rules, or regulations, the parties will promptly enter into negotiations to meet those legal requirements.

#### **19. Effective Date and Term**

This MICIP-Agreement is effective when signed by both parties. Unless terminated under #20, Termination, this MICIP-Agreement will expire one year from adoption (the “Initial Term”). After the Initial Term, this MICIP-Agreement shall automatically renew for 9 additional annual 1-year terms thereafter unless either party gives the other 30 days written notice of its intent to terminate the MICIP-Agreement.

#### **20. Termination**

This MICIP-Agreement may be terminated for any reason by either party upon 30 days prior written notice to the other party.

#### **21. Survival**

The rights, obligations, and conditions set forth in #10, Local District’s Responsibilities; #11, MDE’s Responsibilities; and any right, obligation, or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this MICIP-Agreement, survives any such termination or expiration.

#### **22. Entire Agreement**

This MICIP-Agreement replaces and supersedes all prior agreements between the parties relating to the subject matter of this MICIP-Agreement.

#### **23. Execution**

This MICIP-Agreement may be executed in counterparts, each of which is deemed to be an original, and all of which taken together constitutes one and the same instrument. The signature of any party transmitted by email, or via other electronic means agreed to by the parties, is binding.

#### **24. Successors; Assignment**

This MICIP-Agreement inures to the benefit of and is binding upon the parties, their respective successors-in-interest by way of reorganization, operation of law, or otherwise, and their permitted assigns. Neither party may assign this MICIP-Agreement to any other party without the prior written approval of the

other party provided, however, no such prior written approval is required in the event the transfer or assignment is the result of a legislative mandate, executive order, or school district reorganization (except for dissolution) permitted under Michigan law.

## **25. No Third-Party Beneficiaries**

This MICIP-Agreement does not confer any rights or remedies upon any person or entity other than the parties and their respective successors-in-interest by way of reorganization, operation of law, or otherwise, and their permitted assigns.

## **26. Authority to Bind**

Each person signing this MICIP-Agreement represents that he or she is duly authorized to execute this MICIP-Agreement on behalf of MDE or the Local District.

## **27. Signature Section**

**For MDE**

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Name/position:

Date:

**For Local District**

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Name/position:

Date:

## Schedule A

The initial aggregated data sets and visualizations that may be shared by the Local District per this Agreement are based on information such as those from the following list:

- Student Information System Data
  - Student Demographics
  - Staff Demographics
  - Class, Student and Staff Schedules
  - Daily and Section Attendance
  - Discipline
  - Course Grades
  - Transcripts
  - Student Programs and Services
  - Interventions
  - Badging and Micro-Credentials
  - Assessments
- Data Warehouse/Assessment System Data
  - Formative and Summative Assessment Scores
  - Strand and Item Level Assessment Scores
  - Predictive Scores
  - Interventions
- Special Education System Data
  - Special Education Programs and Services
    - Individualized Education Plan and Goal reports
    - Interventions
    - Discipline
- Local District educational strategy use data from MiStrategyBank
- Other Local District educational data system that are connected to MiDataHub
- Other MICIP Integrated System
- Any other data sets selected by the Local District, in its sole discretion